



0000116150

ORIGINAL

NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2010 AUG 17 A 10:44

KRISTIN K. MAYES, Chairman
 GARY PIERCE
 PAUL NEWMAN
 SANDRA D. KENNEDY
 BOB STUMP

AZ CORP COMMISSION
 DOCKET CONTROL

In the matter of:

DOCKET NO. S-20755A-10-0342

FIVE STAR CAPITAL MARKETS, LLC, a
 Nevada limited liability company,

**NOTICE OF OPPORTUNITY FOR HEARING
 REGARDING PROPOSED ORDER TO
 CEASE AND DESIST, ORDER FOR
 RESTITUTION, ORDER FOR REVOCATION,
 ORDER FOR ADMINISTRATIVE
 PENALTIES AND FOR OTHER
 AFFIRMATIVE ACTION**

JAMES PICCOLO and MARY ELIZABETH
 PICCOLO, husband and wife,

CRAIG COTTRELL, CRD# 4552833, and
 ANDREA COTTRELL, husband and wife,

CHARLEVOIX HOMES, LLC, an Arizona
 limited liability company,

and

MICHAEL ROBERTS, an unmarried man,

Respondents.

Arizona Corporation Commission

DOCKETED

AUG 17 2010

DOCKETED BY

nr

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents FIVE STAR CAPITAL MARKETS, LLC, JAMES PICCOLO, CRAIG COTTRELL, CHARLEVOIX HOMES, LLC and MICHAEL ROBERTS have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division further alleges JAMES PICCOLO controlled FIVE STAR CAPITAL MARKETS, LLC within the meaning of A.R.S. § 44-1999 so that he is jointly and severally liable

1 under A.R.S. § 44-1999 to the same extent as FIVE STAR CAPITAL MARKETS, LLC for violations
2 of the Securities Act.

3 The Division further alleges MICHAEL ROBERTS controlled CHARLEVOIX HOMES,
4 LLC within the meaning of A.R.S. § 44-1999 so that he is jointly and severally liable under A.R.S.
5 § 44-1999 to the same extent as CHARLEVOIX HOMES, LLC for violations of the Securities Act.

6 **I.**

7 **JURISDICTION**

8 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
9 Arizona Constitution and the Securities Act.

10 **II.**

11 **RESPONDENTS**

12 2. FIVE STAR CAPITAL MARKETS, LLC ("FIVE STAR") is a Nevada limited
13 liability company organized since March 24, 2005. According to the records of the Nevada Secretary
14 of State, JAMES PICCOLO is the manager of FIVE STAR. According to the records of the
15 Commission, FIVE STAR is not authorized to transact business as a foreign limited liability company
16 in Arizona.

17 3. JAMES PICCOLO ("PICCOLO") is a resident of Scottsdale, Arizona. During all
18 relevant times, PICCOLO operated Nouveau Riche Corporation ("Nouveau Riche") as the president
19 and CEO. According to the records of the Commission, Nouveau Riche is a Nevada corporation
20 authorized to transact business as a foreign corporation in Arizona. Nouveau Riche is located in
21 Scottsdale, Arizona.

22 4. CRAIG COTTRELL ("COTTRELL"), CRD# 4552833, is a resident of Tempe,
23 Arizona. At all relevant times, COTTRELL represented that he was the president of FIVE STAR.

24 5. COTTRELL was a registered representative with Source Capital Group between
25 May 12, 2006 and November 2006 while COTTRELL offered and sold the CHARLEVOIX Note
26 (as defined below). While a registered as a securities salesman with Source Capital Group,

1 COTTRELL effected securities transactions, the CHARLEVOIX Notes, which were not recorded
2 on the books and records of his dealer at the time of the sales. Since March 17, 2009, COTTRELL has
3 been registered as a securities salesman with Longview Financial Group, Inc.

4 6. CHARLEVOIX HOMES, LLC ("CHARLEVOIX") was, at all relevant times, an
5 Arizona limited liability company organized on February 26, 2003. On November 9, 2009, the
6 Commission administratively dissolved CHARLEVOIX. At all relevant times, MICHAEL
7 ROBERTS was the sole manager/member of CHARLEVOIX.

8 7. MICHAEL ROBERTS ("ROBERTS"), an unmarried man, is a resident of Scottsdale,
9 Arizona. At all relevant times, the offering documents provided to offerees and investors stated that
10 ROBERTS was the president and CEO of CHARLEVOIX.

11 8. FIVE STAR, PICCOLO, COTTRELL, CHARLEVOIX and ROBERTS may be
12 referred to collectively as "Respondents."

13 9. MARY ELIZABETH PICCOLO ("MARY PICCOLO") was, at all relevant times, the
14 spouse of Respondent PICCOLO. ANDREA COTTRELL ("ANDREA COTTRELL") was, at all
15 relevant times, the spouse of Respondent COTTRELL. MARY PICCOLO and ANDREA
16 COTTRELL may be referred to collectively as "Respondent Spouses." Respondent Spouses are
17 joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the
18 marital communities.

19 10. At all times relevant, Respondents PICCOLO and COTTRELL were acting for their
20 own benefit and for the benefit or in furtherance of their and Respondent Spouses' marital
21 communities.

22 III.

23 FACTS

24 11. Between October 2005 and November 2006, Nouveau Riche operated as "an
25 educational company that educates people on real estate -- residential real estate investing."
26 Nouveau Riche conducted a series of classes on "dealing with residential real estate." Nouveau

1 Riche sold home study programs and held seminars known as "Intensives" throughout the United
2 States. Intensives were usually two-day seminars held throughout the United States to promote
3 Nouveau Riche educational programs. COTTRELL, an instructor at Nouveau Riche, conducted
4 some of the Intensives.

5 12. FIVE STAR was created to be an advisory service to assist Nouveau Riche students.
6 FIVE STAR was to provide assistance to the students of Nouveau Riche in their real estate
7 investing.

8 13. COTTRELL stated to offerees and investors that he was the president of FIVE
9 STAR. However, according to COTTRELL, PICCOLO actually controlled FIVE STAR by making
10 all decisions related to FIVE STAR. COTTRELL stated that he had to get permission from
11 PICCOLO or other Nouveau Riche management personnel on all decisions related to FIVE STAR.

12 14. CHARLEVOIX was an Arizona homebuilder that built several real estate
13 developments in Arizona. The funds raised from investors were to be used to fund the
14 development costs for one of the CHARLEVOIX developments.

15 15. PICCOLO introduced ROBERTS to COTTRELL. PICCOLO told COTTRELL that
16 ROBERTS had a "passive investment opportunity." Further, PICCOLO told COTTRELL that
17 ROBERTS had been raising money from investors for a while and thought the investment might be
18 a good product for FIVE STAR to introduce to Nouveau Riche students.

19 16. PICCOLO negotiated with ROBERTS to allow FIVE STAR to offer the
20 CHARLEVOIX Note (as defined below) including negotiating the commissions that FIVE STAR
21 would receive.

22 17. In the fall of 2005, as a benefit to the Nouveau Riche students, FIVE STAR and
23 COTTRELL offered the Nouveau Riche students who attended some of the Intensives, an
24 investment opportunity to purchase notes in the CHARLEVOIX real estate development. Those
25 Nouveau Riche students interested in making an investment received a document titled "Loan
26

1 Agreement" ("CHARLEVOIX Note"). The CHARLEVOIX Note set forth the terms of the
2 investment including the expected return, the collateral and the maturity date.

3 18. On October 1, 2005, after an Intensive, FIVE STAR and COTTRELL sent the
4 attendees an email offering the attendees the opportunity to invest in the CHARLEVOIX Note
5 ahead of other Nouveau Riche students. The email stated that "Jim [PICCOLO], Mike
6 [ROBERTS] and I [COTTRELL] are very excited to share this fantastic offer with our community"
7 and "the Phoenix Nouveau Riche community is the first to get the chance to act on the incredible
8 'Charlevoix Homes' opportunity before next Tuesday's nationwide conference call with Jim
9 Piccolo, Mike Roberts (CEO of Charlevoix Homes) and myself."

10 19. The October 1, 2005, email also included a link to a power point presentation that
11 further explained the CHARLEVOIX Note.

12 20. Furthermore, the October 1, 2005, the email requested that people interested in
13 making the investment in the CHARLEVOIX Note should "make [their] payments out to
14 'Charlevoix Homes' and mail or deliver (remember this is first come/first serve) them to
15 [COTTRELL] at" the FIVE STAR Scottsdale, Arizona, address. In the October 1, 2005 email,
16 COTTRELL represented that once the payment was received, the investor would receive an
17 agreement from CHARLEVOIX.

18 21. On October 11, 2005, COTTRELL sent another email to prospective investors and
19 provided another link for a "presentation that explains this exciting opportunity in detail including
20 financials." The email also provided a website link to obtain a copy of a CHARLEVOIX Note.

21 22. Once the Nouveau Riche students sent their funds to FIVE STAR and COTTRELL,
22 COTTRELL would notify CHARLEVOIX. CHARLEVOIX would then mail the CHARLEVOIX
23 Note to investors. The term of the CHARLEVOIX Notes included "eighteen percent annum
24 interest on the maximum note principal amount, and continue with an interest amount of eighteen
25 percent (18%) per annum on principal amounts not paid on or before the closing of the final
26 home." ROBERTS, on behalf of CHARLEVOIX, signed the CHARLEVOIX Notes.

1 23. Respondents told the investors that the CHARLEVOIX Notes were secure.
2 Respondents said the CHARLEVOIX Notes were to be secured either by a "2nd Deed of Trust held
3 on behalf of all investors by Five Star Capital Markets" or by a "lien on lots." Respondents did not
4 record a second deed of trust or lien for the benefit of the investors, either individually or for the
5 benefit of FIVE STAR.

6 24. The CHARLEVOIX Note offering documents provided to the investors by FIVE
7 STAR stated that the investment was guaranteed by a "Charlevoix Home Corporate guarantee."
8 However, there was no CHARLEVOIX guarantee.

9 25. Between October of 2005 through November of 2006, Respondents offered and sold
10 the CHARLEVOIX Notes to over 100 investors who invested over \$5.5 million. Almost all of the
11 investors were Nouveau Riche students.

12 26. FIVE STAR received over \$200,000 in referral fees/commissions from
13 CHARLEVOIX for the Nouveau Riche students who invested in the CHARLEVOIX Notes.

14 27. At all times relevant, FIVE STAR, PICCOLO, CHARLEVOIX and ROBERTS were
15 neither registered as dealers nor as salesmen with the Commission.

16 28. From October of 2005 through May 11, 2006, COTTRELL was not registered as a
17 securities salesman with the Commission. COTTRELL was a registered representative with Source
18 Capital Group between May 12, 2006 and November 2006 while COTTRELL offered and sold the
19 CHARLEVOIX Note. While a registered as a securities salesman with Source Capital Group,
20 COTTRELL effected securities transactions, the CHARLEVOIX Notes, which were not recorded on
21 the books and records of his dealer at the time of the sales.

22 29. The CHARLEVOIX Note was not registered with the Commission.

23 ...

24 ...

25 ...

26 ...

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

30. From on or about October of 2005 through November of 2006, Respondents offered or sold securities, in the form of notes, within or from Arizona.

31. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

32. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

33. Respondents FIVE STAR, PICCOLO, CHARLEVOIX and ROBERTS offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

34. From October 2005 through May 11, 2006, Respondent COTTRELL offered or sold securities within or from Arizona while not registered as a salesman pursuant to Article 9 of the Securities Act.

35. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

36. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or

1 deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the
2 following:

3 a) FIVE STAR, PICCOLO and COTTRELL, misrepresented to offerees and
4 investors that the investments in CHARLEVOIX was guaranteed by a corporate guarantee in
5 CHARLEVOIX when, in fact, there was no corporate guarantee.

6 b) FIVE STAR, PICCOLO, COTTRELL, CHARLEVOIX and ROBERTS
7 misrepresented to offerees and investors that the note was secured by a second deed of trust held on
8 behalf of the investors by FIVE STAR or a lien on the lots. There was no second deed of trust filed
9 for the benefit of FIVE STAR investors. Nor were any liens filed on the lots to benefit the investors.

10 37. This conduct violates A.R.S. § 44-1991.

11 38. PICCOLO directly or indirectly controlled persons or entities within the meaning of
12 A.R.S. § 44-1999, including but not limited to FIVE STAR. Therefore, PICCOLO is jointly and
13 severally liable under A.R.S. § 44-1999 to the same extent as FIVE STAR for any violations of
14 A.R.S. § 44-1991.

15 39. ROBERTS directly or indirectly controlled persons or entities within the meaning of
16 A.R.S. § 44-1999, including but not limited to CHARLEVOIX. Therefore, ROBERTS is jointly and
17 severally liable under A.R.S. § 44-1999 to the same extent as CHARLEVIOX for any violations of
18 A.R.S. § 44-1991.

19 VII.

20 REMEDIES PURSUANT TO A.R.S. § 44-1962

21 (Denial, Revocation, or Suspension of Registration of Salesman; Restitution, Penalties, or other 22 Affirmative Action)

23 40. Respondent COTTRELL's conduct, from May 12, 2006 through November 2006, is
24 grounds to revoke his registration as securities salesman with the Commission pursuant to A.R.S. §
25 44-1962. Specifically, COTTRELL has:

26 a) violated the Arizona Securities Act; and

- b) engaged in dishonest or unethical practices in the securities industry including effecting securities transactions that were not recorded on the records of the dealer with whom COTTRELL was registered at the time of the transaction.

41. Respondent COTTRELL's conduct is grounds to assess restitution, penalties, and/or take appropriate affirmative action pursuant to A.R.S. § 44-1962.

VIII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents FIVE STAR, PICCOLO, CHARLEVOIX and ROBERTS to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;
2. Order Respondent COTTRELL to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. §§ 44-2032 and 44-1962;
3. Order Respondents FIVE STAR, PICCOLO, CHARLEVOIX and ROBERTS to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
4. Order Respondent COTTRELL to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032 and 44-1962;
5. Order Respondents FIVE STAR, PICCOLO, COTTRELL, CHARLEVOIX and ROBERTS to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
6. Order Respondent COTTRELL to pay the state of Arizona administrative penalties, pursuant to A.R.S. § 44-1962;
7. Order the revocation or suspension of Respondent COTTRELL's registration as a securities salesman pursuant to A.R.S. § 44-1962;

IX.

Each respondent, including Respondent Spouses, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

• • •

• • •

...

X.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.


Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Wendy Coy, Senior Counsel.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 17 day of August, 2010.


Matthew J. Neubert
Director of Securities